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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

FILE: WAC 02 028 56367 Office: CALIFORNIA SERVICE CENTER

Date: JAN 27 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

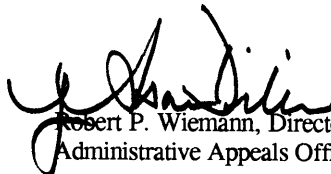
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a software designer and service provider. It employs 70 people and has a gross annual income of over \$20,638,621. It seeks to temporarily employ the beneficiary as a programmer analyst. The petitioner seeks an extension of H1B status for the beneficiary. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered specialty occupation.

On appeal, the petitioner submits a letter and other documentation. The petitioner asserts that the beneficiary is qualified to perform the duties of a specialty occupation because the combination of his education and experience is the equivalent of a U.S. bachelor's degree in computer science.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. § 214.2(h)(4)(iii)(C). As the proffered position is a programmer analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or a related field.

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not meet this criterion.

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The proffered position requires a degree in computer science or a related field. The beneficiary's Indian degree is in mechanical engineering, which cannot be considered to be a degree required by this particular occupation.

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

This occupation does not require a State license, registration, or certification.

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of his education, practical experience, and/or specialized training, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate

or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and

that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the record includes an evaluation report prepared by the Foundation for International Services, Inc. (FIS). The evaluation states that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of his education, professional training and employment experience. FIS is not qualified to prepare an evaluation of this sort as it does not: "[Have] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience" as required by the regulation.

FIS is, however, qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to bachelor's and master's degrees in mechanical engineering from an accredited college or university in the United States. This part of the evaluation is accepted, but the AAO does not accept

the assessment of the beneficiary's work experience and other training, as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), or (3). The only category under which the beneficiary could qualify would be the fourth criterion, through the standards set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation referenced at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v). The petitioner did not submit any evidence to support the beneficiary's eligibility under this regulation other than two brief letters, which are considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). This standard requires "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." One letter is from the beneficiary's supervisory and the other is from a former colleague. Both letters essentially state that the beneficiary possesses strong programming and software skills. These two letters, however, are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's expertise.

The petitioner asserts that the beneficiary should be considered qualified to perform the duties of a specialty occupation, because he has already been granted H1B status. It must be noted that each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

The record fails to establish that the beneficiary is qualified to perform the duties of a specialty occupation. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.